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### INITIATIVE 233

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 233 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to shared parental ~~responsibility~~ duties and  
2 residential provisions of ~~permanent~~ parenting plans; amending RCW  
3 26.09.002, 26.09.004, 26.09.187, and 26.09.194; and adding a new  
4 section to chapter 26.09 RCW; and creating a new section.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

6 NEW SECTION. Sec. 1. This act shall be known and may be cited as  
7 the shared parental ~~responsibility~~ duties act.

8 Sec. 2. Rcw 26.09.002 and 1987 c 460 are each amended to read as  
9 follows:

10 The state declares that maximizing and preserving children's access  
11 to and involvement with their parents during and after dissolution  
12 proceedings is an issue of fundamental state interest, and that  
13 maximizing and preserving children's access to and involvement with  
14 each of their parents is the single most significant action which can  
15 be taken to reduce societal distress, and which is the most cost-  
16 effective result for society at large, specifically in areas such as

1 the school drop-out rate, the juvenile crime rate, and the breakdown  
2 of marriages.

3 The state declares that parents ~~Parents~~ have the responsibility and  
4 the duty to make decisions and perform ~~other~~ parental functions  
5 necessary for the care and growth of their minor ~~children~~ child(ren).

6 The state declares that in ~~In~~ any proceeding between parents under  
7 this chapter, the best interests of the child(ren) shall be  
8 determined by the parents of the child(ren) and shall be the standard  
9 by which the court ~~determines and allocates the parties' each~~  
10 parent's parental responsibilities duties unless harmful to the  
11 child(ren).

12 The state ~~recognizes~~ declares that the fundamental importance of  
13 each of the two the parent-child relationship relationships to the  
14 welfare present and future well-being of the child is paramount. ~~and~~  
15 ~~the state also declares~~ that the relationship between the child and  
16 each parent ~~should~~ shall be fostered and preserved unless clearly  
17 inconsistent with the child's ~~best interests~~ well being.

18 The state declares that the best interests of the child are served  
19 by a parenting ~~arrangement~~ arrangements that preserve and promote  
20 each parent-child relationship and that best maintains a child's  
21 emotional growth, health and stability, and physical care; and that  
22 are ideally is as close to equal time as is possible in each case.

23 Further, the state declares that the best interest of the child is  
24 ordinarily served when the existing pattern of interaction parenting  
25 between a each parent and child is altered only to the extent  
26 necessitated by the changed ~~relationship~~ circumstances of the parents  
27 or as required to protect the child from clear physical, mental, or  
28 emotional harm.

29 Sec. 3. RCW 26.09.004 and 1987 c 460 s 3 are each amended to read as  
30 follows:

31 The definitions in this section apply throughout this chapter.

32 (1) "Temporary parenting plan" means a plan for parenting of the  
33 child pending final resolution of any action for dissolution of  
34 marriage, declaration of invalidity, or legal separation ~~which is~~  
35 ~~incorporated in a temporary order.~~

36 (2) "Permanent parenting plan" means a plan for parenting the child,  
37 including allocation of parenting ~~functions~~ duties, which plan is  
38 incorporated in any final decree or decree of modification in an

1 action for dissolution of marriage, declaration of invalidity, or  
2 legal separation.

3 (3) "Parenting ~~functions~~ duties" means those aspects of the parent-  
4 child relationship in which the parent makes decisions and performs  
5 functions which are necessary for the care and growth of the child.  
6 The term "parenting ~~functions~~ duties" includes the following:

7 (a) Maintaining a loving, stable, consistent, and nurturing  
8 relationship with the child;

9 (b) Attending to the daily ~~physical~~ needs of the child, ~~such as~~  
10 ~~feeding, clothing, physical care and grooming, supervision, health~~  
11 ~~care, and day care,~~ and engaging in ~~other~~ activities which are  
12 appropriate to the developmental level of the child and that are  
13 within the social and economic circumstances of the particular  
14 family;

15 (c) Attending to adequate education for the child, including  
16 remedial or other education essential to the ~~best interests~~ needs of  
17 the child;

18 (d) Assisting the child in developing and maintaining appropriate  
19 interpersonal relationships;

20 (e) Exercising appropriate judgment regarding the child's ~~welfare~~  
21 needs, consistent with the child's developmental level and the  
22 family's social and economic circumstances; and

23 (f) Providing for the financial support of the child.

24 (4) "Shared parental responsibility duties" means both parents co-  
25 operating with each other and assisting each other as much as  
26 possible in order to perform parental duties functions and to fulfill  
27 the needs of the child(ren) and includes shared residential placement  
28 and mutual decision-making authority.

29 (5) "Shared residential placement" means an order allocating ~~each~~  
30 parent specific periods of residential time to each parent, amounting  
31 in the aggregate to no less than 35% of the overnights on a monthly  
32 basis throughout the calendar year, in which a child is under the  
33 actual, direct, day-to-day care and supervision of each of the  
34 parents.

35 (6) "Right of first refusal" means that if a parent is using a day  
36 care facility to care for the child(ren) during that parent's  
37 residential time, the other parent shall have the option of  
38 performing parental duties for the child(ren) during the time period  
39 when the children are scheduled to be at the day care facility.

1 Sec. 4. RCW 26.09.184 and 1991 c 367 s 7 are each amended to read as  
2 follows:

3 (1) OBJECTIVES. The objectives of the ~~permanent~~ parenting plan are  
4 to:

5 (a) Provide for the child's physical care and residential  
6 stability;

7 (b) Maintain the child's emotional stability;

8 (c) Provide for the child's changing needs as the child grows and  
9 matures, in a way that minimizes the need for future modifications to  
10 the permanent parenting plan;

11 (d) Set forth the ~~authority and responsibilities~~ duties of each  
12 parent with respect to the child, consistent with the criteria in RCW  
13 26.09.187 ~~and 26.09.191~~;

14 (e) Minimize the child's exposure to harmful parental conflict;

15 (f) Encourage the parents, ~~where appropriate under RCW 26.09.187~~  
16 ~~and 26.09.191~~, to meet their responsibilities to their minor ~~children~~  
17 child(ren) through agreements in the permanent parenting plan, rather  
18 than by relying on judicial intervention; and

19 (g) To ~~otherwise protect the best interests of the child~~ fulfill  
20 the policy directives of ~~consistent with~~ RCW 26.09.002.

21 (h) To provide maximum opportunity for each parent to interact  
22 with the child(ren) by performing parenting duties.

23 (2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent  
24 parenting plan shall contain provisions for resolution of future  
25 disputes between the parents, allocation of decision-making authority  
26 and residential provisions for the child(ren).

27 (3) DISPUTE RESOLUTION. A process for resolving disputes, other than  
28 court action, shall be provided unless ~~precluded or limited by~~ RCW  
29 ~~26.09.187 or 26.09.191~~ RCW 26.09.191 applies. A dispute resolution  
30 process may include counseling, mediation, or arbitration by a  
31 specified individual or agency, or court action, but may not be used  
32 to permit deviations from the parenting plan without agreement of the  
33 parents.

34 In the dispute resolution process:

35 (a) Preference shall be given to carrying out the parenting plan;

36 (b) The parents shall use the designated process to resolve  
37 disputes relating to implementation of the plan, ~~except those related~~  
38 ~~to financial support~~, unless an emergency exists;

1       (c) Within seven calendar days of the end of the dispute  
2 resolution process, the person conducting the proceedings shall  
3 prepare a ~~A written record shall be prepared~~ of any agreement reached  
4 in counseling or mediation and of each arbitration award decision and  
5 shall provide a copy ~~be provided~~ to each parent party;

6       (d) If the court finds that a parent has used or frustrated the  
7 dispute resolution process without good reason, the court shall award  
8 attorneys' fees and financial sanctions to the prevailing parent;

9       (e) The parties have the right of review from the dispute  
10 resolution process to the superior court; and

11       (f) The provisions of (a) through (e) of this subsection shall be  
12 set forth in the ~~decree~~ parenting plan.

13 (4) ALLOCATION OF DECISION-MAKING AUTHORITY.

14       (a) The parenting plan shall allocate decision-making authority  
15 ~~to one or both parties jointly~~ mutually to both parents regarding the  
16 children's education, health care, and religious upbringing unless  
17 RCW 26.09.191 applies. The ~~parties~~ parents may incorporate an  
18 agreement related to the care and growth of the their child(ren) in  
19 these specified areas, or in other areas, into ~~their~~ the parenting  
20 ~~plan, consistent with the criteria in RCW 26.09.187 and 26.09.191.~~  
21 Regardless of the allocation of decision-making in the parenting  
22 plan, either parent ~~may~~ shall make emergency decisions affecting the  
23 ~~health or safety of the child~~ while the child is under that parent's  
24 care and control.

25       (b) Each parent ~~may~~ shall make decisions regarding the day-to-day  
26 care and control of the child while the child is residing in the  
27 physical care and control of with that parent.

28       (c) When mutual decision making is designated but cannot be  
29 achieved, the parties shall make a good-faith effort to resolve the  
30 issue through the dispute resolution process.

31 (5) RESIDENTIAL PROVISIONS FOR THE CHILD. The parenting plan shall  
32 include a residential schedule which designates in which parent's  
33 home each minor child shall reside on given days of the year,  
34 including provision for holidays, birthdays of family members,  
35 vacations, and other special occasions, ~~consistent with the criteria~~  
36 ~~in RCW 26.09.187 and 26.09.191.~~

37 (6) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply with  
38 a provision of a parenting plan or a child support order, the other  
39 parent's obligations under the parenting plan or the child support

order are not affected. Failure to comply with a residential provision in a parenting plan ~~or a child support order~~ may result in a finding of contempt of court, under RCW 26.09.160 ~~or RCW 26.18.050~~.  
(7) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The permanent parenting plan shall set forth the provisions of subsections (3)(a) through (c), (4)(b) and (c), and (6) of this section.

Sec. 5. RCW 26.09.187 and 1989 c 375 s 10 are each amended to read as follows:

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it ~~finds~~ makes a written finding that ~~any~~ a specific limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then ~~in designating such a process~~ the court shall adopt an agreement between the parents. If there is no agreement, the court shall consider all relevant factors in designating a process, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) ~~The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and~~

~~————(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.~~

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve all agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(4)(a), when it finds that:

(i) ~~The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191~~ does not apply; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

1       ~~(i) A~~ a limitation on the other parent's decision-making  
2 authority is mandated by RCW 26.09.191;

3       ~~(ii) Both parents are opposed to mutual decision making;~~

4       ~~—— (iii) One parent is opposed to mutual decision making, and~~  
5 ~~such opposition is reasonable based on the criteria in (c) of this~~  
6 ~~subsection;~~

7       (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)  
8 and (b) of this subsection, the court shall consider ~~the following~~  
9 ~~criteria in allocating decision-making authority:~~

10       ~~—— (i) The existence of a limitation under RCW 26.09.191;~~

11       ~~—— (ii) The history of participation of each parent in decision~~  
12 ~~making in each of the areas in RCW 26.09.184(4)(a);~~

13       ~~—— (iii) Whether the parents have a demonstrated ability and~~  
14 ~~desire to cooperate with one another in decision making in each of~~  
15 ~~the areas in RCW 26.09.184(4)(a); and~~

16       ~~—— (iv) The parents' geographic proximity to one another, to the~~  
17 ~~extent that it affects their ability to make timely mutual decisions~~  
18 ~~order that decision making shall be equally mutually shared by the~~  
19 ~~parents consistent with RCW 26.09.~~

20       (3) RESIDENTIAL PROVISIONS.

21       ~~(a) The court shall make residential provisions for each child~~  
22 ~~which encourage each parent to maintain a loving, stable, and~~  
23 ~~nurturing relationship with the child, consistent with the best~~  
24 ~~interests of the child the child's developmental level, and the~~  
25 ~~family's social and economic circumstances. The child's residential~~  
26 ~~schedule shall be consistent with RCW 26.09.191.~~

27       ~~Unless the parents agree otherwise, There is a presumption that~~  
28 ~~the child's residential schedule shall provide shared parental~~  
29 ~~responsibility residential placement in accordance with section 6 3~~  
30 ~~of this act, and shall not allocate less than 35% of the overnights~~  
31 ~~unless RCW 26.09.191 applies. Where the limitations of When RCW~~  
32 ~~26.09.191 are not dispositive of the child's residential schedule~~  
33 ~~does not apply, the court shall consider the following factors in~~  
34 ~~making its decision:~~

35       ~~(i) (a) The relative strength, nature, and stability of the~~  
36 ~~child's relationship with each parent including;~~

37       ~~(b) To what extent each parent has performed parenting~~  
38 ~~functions, including those relating to the daily needs of the child;~~

1       ~~(ii)~~ (c) The agreements of the parties, provided they were  
2 entered into knowingly and voluntarily;

3       ~~(iii)~~ (d) The extent to which each parent is likely to allow  
4 and encourage the child to have frequent and continuing contact with  
5 the other parent;

6       ~~(v)~~ (e) Each parent's past and potential for future performance  
7 of parenting functions duties;

8       ~~(iv)~~ (f) The emotional needs and developmental level of the  
9 child;

10       ~~(v)~~ (g) The child's relationship with siblings and with other  
11 significant adults, as well as the child's involvement with his or  
12 her physical surroundings, school, or other significant activities;

13       ~~(vi)~~ (h) ~~The wishes of the parents and the wishes of a child~~  
14 ~~who is sufficiently mature to express reasoned and independent~~  
15 ~~preferences as to his or her residential schedule; and~~

16       ~~(vii)~~ (i) Each parent's employment schedule, and shall make  
17 accommodations consistent with those schedules.

18 ~~—— Factor (i) shall be given the greatest weight.~~

19 ~~—— (b) The court may order that a child frequently alternate his~~  
20 ~~or her residence between the households of the parents for brief and~~  
21 ~~substantially equal intervals of time only if the court finds the~~  
22 ~~following:~~

23 ~~—— (i) No limitation exists under RCW 26.09.191;~~

24 ~~—— (ii)(A) The parties have agreed to such provisions and the~~  
25 ~~agreement was knowingly and voluntarily entered into; or~~

26 ~~—— (B) The parties have a satisfactory history of cooperation and~~  
27 ~~shared performance of parenting functions; the parties are available~~  
28 ~~to each other, especially in geographic proximity, to the extent~~  
29 ~~necessary to ensure their ability to share performance of the~~  
30 ~~parenting functions; and~~

31 ~~—— (iii) The provisions are in the best interests of the child.~~

32 Sec. 6. RCW 26.09.194 and 1987 c 460 s 13 are each amended to read  
33 as follows:

34 ~~(1) A parent seeking a temporary order relating to parenting shall~~  
35 ~~file and serve a proposed temporary parenting plan by motion. The~~  
36 ~~other parent, if contesting the proposed temporary parenting plan,~~  
37 ~~shall file and serve a responsive proposed parenting plan. Either~~  
38 ~~parent may move to have a proposed temporary parenting plan entered~~



1 ~~as part of a temporary order. Upon the filing of a summons and~~  
2 ~~petition under this chapter in which there are minor children~~  
3 ~~child(ren), the court clerk shall may issue an ex parte temporary~~  
4 ~~parenting plan for the children. The An ex parte temporary parenting~~  
5 ~~plan shall have a clear notice on its face specify that the children~~  
6 ~~child(ren) shall have no less than 35% residential time with each~~  
7 ~~parent. The A temporary parenting plan shall also order joint mutual~~  
8 ~~decision making. The residential provisions of the temporary~~  
9 ~~parenting plan may be completed by the petitioner and signed ex parte~~  
10 ~~by the commissioner at the time of filing or it may be presented at a~~  
11 ~~later time upon proper notice. If the temporary parenting plan is~~  
12 ~~signed ex parte, the petitioner shall serve the summons, petition,~~  
13 ~~and the ex parte temporary parenting plan together. An initial An ex~~  
14 ~~parte temporary parenting plan that is signed ex parte shall have a~~  
15 ~~clear notice prominently displayed on its face that the party- parent~~  
16 ~~being served may move to amend the temporary parenting plan upon~~  
17 ~~three court days notice to the other parent, with the hearing to be~~  
18 ~~held within five calendar days of service of the notice of the motion~~  
19 ~~on the other parent. If the Ex parte temporary parenting plans~~  
20 ~~issued at the time of filing of the summons and petition shall be~~  
21 ~~served only by personal service upon the other parent.~~

22 (2) The parents may enter an agreed temporary parenting plan at any  
23 time as part of a temporary order which shall be signed and entered  
24 by the court if both parents have signed and dated the proposed  
25 temporary parenting plan. The proposed temporary parenting plan may  
26 be supported by relevant evidence and shall be accompanied by an  
27 affidavit or declaration which shall state at a minimum the  
28 following:

29 — (a) The name, address, and length of residence with the person  
30 or persons with whom the child has lived for the preceding twelve  
31 months;

32 — (b) The performance by each parent during the last twelve months  
33 of the parenting functions relating to the daily needs of the child;

34 — (c) The parents' work and child care schedules for the preceding  
35 twelve months;

36 — (d) The parents' current work and child care schedules; and

37 — (e) Any of the circumstances set forth in RCW 26.09.191 that are  
38 likely to pose a serious risk to the child and that warrant

1 ~~limitation on the award to a parent of temporary residence or time~~  
2 ~~with the child pending entry of a permanent parenting plan.~~

3 ~~—— (2) At the hearing, the court shall enter a temporary parenting~~  
4 ~~order incorporating a temporary parenting plan which includes:~~

5 ~~—— (a) A schedule for the child's time with each parent when~~  
6 ~~appropriate;~~

7 ~~—— (b) Designation of a temporary residence for the child;~~

8 ~~—— (c) Allocation of decision-making authority, if any. Absent~~  
9 ~~allocation of decision-making authority consistent with RCW~~

10 ~~26.09.187(2), neither party shall make any decision for the child~~  
11 ~~other than those relating to day-to-day or emergency care of the~~  
12 ~~child, which shall be made by the party who is present with the~~  
13 ~~child;~~

14 ~~—— (d) Provisions for temporary support for the child; and~~

15 ~~—— (e) Restraining orders, if applicable, under RCW 26.09.060.~~

16 (3) ~~(2)~~ A parent may make a motion for an order to show cause and the  
17 court may amend the provisions of the ~~enter a temporary order,~~  
18 ~~including a temporary parenting plan, upon a showing of necessity.~~

19 ~~—— (4) A parent may move for amendment of a temporary parenting~~  
20 ~~plan, and the court may order amendment to the temporary parenting~~  
21 ~~plan, if the amendment conforms to the limitations of RCW 26.09.191~~  
22 ~~and is in the best interest of the child.~~

23 ~~(5)~~ (3 4) If a proceeding for dissolution of marriage, legal  
24 separation, or declaration of invalidity is dismissed, any temporary  
25 order or temporary parenting plan is vacated and prospectively shall  
26 be null and void.

27 NEW SECTION. Sec. 7. A new section is added to chapter 26.09 RCW to  
28 read as follows:

29 (1) There shall be a presumption that shared parental ~~responsibility~~  
30 duties and shared residential placement is ~~always~~ in the best  
31 interests of minor child(ren) unless

32 (a) The parents have agreed to alternate residential  
33 arrangements; or

34 (b) A parent alleges that shared parental ~~responsibility~~ duties  
35 and/or shared residential placement would be detrimental to the child  
36 or children, in which case that parent ~~has~~ shall have the burden of  
37 establishing the allegation by clear and convincing evidence. Any  
38 such evidence shall be presented by oral testimony in open court and

1 subject to cross-examination. An allegation of detriment under this  
2 subsection shall not be tried on affidavits or declarations.

3 (2) If a parent alleges that shared parental responsibility duties  
4 and/or shared residential placement would be detrimental to a  
5 particular child, the court may order a an investigation limited to  
6 whether a shared parental responsibility duties order and/or shared  
7 residential placement order is, or is not, appropriate regarding that  
8 particular child. If the court declines to enter a shared parental  
9 responsibility duties order and/or shared residential placement order  
10 regarding that particular child, the court shall enter written  
11 findings of fact and conclusions of law stating the reasons that  
12 shared parental responsibility duties and/or shared residential  
13 placement is found to be detrimental to ~~the children~~ that particular  
14 child and listing the evidence relied upon by the court in making the  
15 determination of detriment.

16 (3) No court ~~may~~ shall restrict or impede either parent's ability to  
17 effectively perform parenting ~~functions~~ duties by means of  
18 residential schedules or decision-making provisions unless there is a  
19 valid and proper finding of necessity pursuant to RCW 26.09.191.

20 (4) No court ~~may~~ shall enter any order altering or suspending or  
21 otherwise changing the provisions of any parenting plan without  
22 proper notice to both parents and a meaningful opportunity to be  
23 heard by both parents.

24 (5) Subsection (1)(b) of this section applies to orders brought  
25 pursuant to chapter 26.50 RCW except that it does not apply if the  
26 alleged conduct ~~alleged~~ constitutes a crime which has been reported  
27 to a police agency and a copy of that crime report is attached to the  
28 motion.

29 (7) Unless RCW 26.09.191 applies, the court shall approve any and all  
30 agreements of the parties regarding the care and control of their  
31 child(ren), including residential provisions and arrangements, and  
32 shall presume that any such arrangements or agreements are in the  
33 best interests of the child(ren).

34 (8) Unless RCW 26.09.191 applies, each parent has the right of first  
35 refusal regarding care and control of their child(ren). ~~"Right of~~  
36 ~~first refusal"~~ ~~means that if a parent is unable to provide for the~~  
37 ~~care and control of the children during the time period that the~~  
38 ~~parenting plan designates that parent as the residential parent, then~~  
39 ~~the other parent shall perform the care and control of the children,~~

1 ~~if possible, until the designated parent is able to resume the care~~  
2 ~~and control of the children.~~

3 (9) A parent may bring a motion to adjust the residential provisions  
4 of a permanent parenting plan for the purpose of applying the  
5 provisions of subsection (4), (5), and (6) of section 3 of this act  
6 if at least two years has elapsed since the entry of the most recent  
7 permanent parenting plan. The procedural provisions of CR 60(e)  
8 shall be used to commence this process and to provide notice. An  
9 adjustment to the residential schedule of a permanent parenting plan  
10 under this subsection shall be for no more the 50% of residential  
11 time, unless the parents agree otherwise. No change in circumstances  
12 is required, but the motion shall be supported with a declaration  
13 detailing the proposed adjustments and stating how the adjustments  
14 will benefit the child(ren). A proposed parenting plan containing  
15 the requested adjustments shall be filed and served with the motion  
16 and declaration. This subsection applies only when parents reside in  
17 the same county or a county adjacent to the county in which the  
18 child(ren) reside. The motion shall only be brought in the venue  
19 where the child(ren) reside. The court shall grant the motion unless  
20 the other parent resists the proposed adjustment by producing a  
21 preponderance of evidence showing that the child(ren) would not  
22 benefit by the proposed adjustment.

23 A motion brought pursuant to this subsection is not an action to  
24 modify a permanent parenting plan within the meaning of RCW 26.09.260  
25 or 26.09.270.

26 If the permanent parenting plan is adjusted and the result is  
27 less than 50% residential time to each parent, two years must elapse  
28 before a similar motion can be brought.

29 This section applies only to residential provisions of permanent  
30 parenting plans and may not be used for any other purpose.

--- END ---